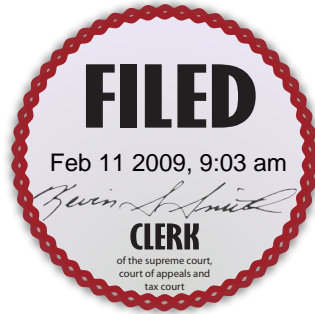


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**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF A.M.P., Jy.H. and Je.H.,)
Minors,)

CURTISSA L. RODRIGUEZ, Mother,)
Appellant-Respondent,)

vs.)

LAKE COUNTY DEPARTMENT OF)
CHILD SERVICES,)
Appellee-Petitioner.)

No. 45A03-0806-JV-325

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Mary Beth Bonaventura, Senior Judge
Cause Nos. 45D06-0610-JT-140; 45D06-0610-JT-142; and
45D06-0610-JT-141

February 11, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Curtissa L. Rodriguez (“Mother”) appeals the trial court’s order terminating her parental relationship with her minor children, A.M.P, Jy.H. and Je.H.

We affirm.

ISSUE

Whether the trial court erred when it terminated Mother’s parental relationship with her children.

FACTS

In March of 2004, Mother and her partner,¹ London Rodriguez (“London”), were arrested at a Lake County post office on charges of forgery, mail fraud, theft, and check fraud. Mother’s children, A.M.P. (born July 13, 1997), Jy.H. (born October 18, 1999), and Je.H. (born May 6, 2001) were present at the time of her arrest. The police released the children into the custody of the Lake County Department of Child Services (“LCDCS”) “because no one was available to take custody of the[m].” (Tr. 27). The children were placed into foster care with Ms. Evelyn Wilson.

On May 14, 2004, the LCDCS filed a CHINS petition, wherein it alleged that due to Mother’s incarceration, A.M.P, Jy.H., and Je.H. were children in need of services. On October 20, 2004, the children were declared wards of the State, effective (retroactively to) March 26, 2004. The LCDCS formulated a case plan aimed at reuniting Mother with her children by January of 2006. Under the case plan, Mother was to submit to random

¹ Throughout the record, London Rodriguez is referred to as Mother’s “husband” and as “Mr. Rodriguez.” Mother claims to have married London, a woman, in Chicago, Illinois, and insists that “Illinois does honor a same sex marriage.” (Tr. 228).

drug screens and drug evaluation, complete parenting classes, undergo individual and family counseling, and attend visitation with the children.

By all accounts, Mother was initially very diligent about complying with the terms of the case plan. Her drug tests yielded consistently negative results; she successfully completed parenting classes; and she attended her scheduled visitations. Subsequently, caseworkers became concerned when A.M.P, Jy.H., and Je.H. began to display behavioral problems and were having difficulty sleeping after visitations.

The children already had “some level of inappropriate sexual behaviors, inappropriate boundaries, tantrums, crying [and] behavioral issues.” (Tr. 119). A.M.P. became “defiant and disrespectful.” (Tr. 95). She and Jy.H. exhibited “depressive symptoms” and required medication to address those issues. (Tr. 134). Je.H. required medication for his attentive-deficit hyperactivity disorder (ADHD) and was “hospitalized psychiatrically in December 2006 due to self-injurious behavior and aggression.” (Rodriguez’s App. 134).

The children made allegations to their therapist concerning London, whom they referred to as “Poppy.” (Tr. 36). A.M.P. expressed fear “that [Poppy] might whoop her.” (Tr. 35). Jy.H. alleged that Poppy had bound the children to their beds with shoelaces. Jy.H. also alleged that the plastic mattress cover smelled like Poppy’s sex toy, and that Poppy had “put his sex toy in [Jy.H.] face.” (Tr. 36). The LCDCS conducted an investigation and the claim of abuse and neglect was substantiated.

On September 13, 2004, the LCDCS petitioned the trial court to discontinue London’s visitations with the children. The trial court granted the motion. Visitations

later resumed, however, at the recommendation of the children's therapist, Amy Douglas. Douglas thought it prudent to reinstate London's visitations because she was going to remain in Mother's household and therefore, "really needed to be involved in the services." (Tr. 121).

Visitation was again suspended when Jy.H. alleged that Mother and London had engaged in sexual activity in front of him and A.M.P. The LCDCS investigated, but could not substantiate the allegation because Jy.H. recanted his claim. Mother and London's visitation subsequently resumed.

Around November of 2005, the trial court suspended Mother's random drug screens, apparently satisfied that she was not abusing drugs.² In January of 2006, immediately before a scheduled visitation, Mother was asked, unexpectedly, to submit a drug sample. She tested positive for cocaine use. Mother admitted that she had relapsed into drug use in September of 2005 and had abused drugs from September 2005 through December of 2006. She voluntarily enrolled in an out-patient drug treatment at Tri-City Mental Health Department in East Chicago, Indiana; however, she attended only three of thirty-six sessions and was discharged for non-compliance.

On July 14, 2006, the trial court conducted a permanency hearing, wherein it ordered Mother into an intensive in-patient drug treatment program. The LCDCS and Mother's counsel encouraged her to accept the in-patient treatment; however, Mother declined to participate and "didn't think that it was necessary." (Tr. 204). At the time, the LCDCS had been providing services to Mother for two and one-half years. The trial

² Mother had tested negative for drug use for approximately a year and a half.

court changed the permanency plan to one of termination of parental rights. On October 18, 2006, the LCDCS filed a petition to terminate Mother's parental relationship with A.M.P, Jy.H., and Je.H.

In December of 2006, Mother's visitations ceased. She failed to maintain contact with the LCDCS and the service providers. Mother and London were indicted by a federal grand jury in Michigan for forgery, theft, and check fraud charges stemming from their operation of a check forging scheme and possession of counterfeited securities.³ Mother was convicted and incarcerated from December 2006 through March 2008. During her fifteen-month incarceration, Mother participated in Christian education, life changes, and drug treatment classes. She also wrote letters to the children; however, the trial court did not permit them to be delivered.

After a review hearing on July 18, 2007, the children's maternal grandmother asked the trial court to consider her for adoption of the children and her Illinois home as a placement. The trial court ordered the LCDCS to initiate an interstate compact.⁴ In September of 2007, the LCDCS requested an Interstate Compact home study of the children's grandmother's Illinois residence. On October 25, 2007, an Interstate Services social worker visited the home and, ultimately, recommended the children's maternal grandmother for placement. In the social worker's report, she noted the grandmother's love and concern for the children, her ability to support the children financially, and

³ Mother and London apparently "us[ed] legitimate checks . . . to create counterfeit ones. They also recruited people to open bank accounts to cash [over \$90,000.00 in] counterfeit checks." (App. 133).

⁴ The record reveals that the children's maternal grandmother attended review hearings on July 18, 2007 and December 7, 2007.

“strong support system that would assist [her] with caring for her grandchildren”; however, the report also noted that the grandmother has “not faced the fact that [Mother] is a long-time substance abuser” and “does not appear to understand completely the scope of the children’s special needs.” (Rodriguez’s App. 143). Upon receipt of the home study findings and recommendation, case managers declined to move the children, who had become strongly bonded to their foster mother, Ms. Wilson.

In March of 2008, Mother was released from federal prison and was living in a homeless shelter, pursuant to a transitional housing program. The fact-finding hearing on the termination petition commenced on April 24, 2008, and continued on May 7, 2008.

Case managers Diane Edwards, Nadine Facen, and Linda Roberts, and therapist Amy Douglas testified that termination of Mother’s parental relationship with the children, and adoption by Ms. Wilson was in the children’s best interests. Mother and her parents testified as well. Grandmother expressed her desire to be granted custody of her grandchildren. She testified that immediately after the children were removed from Mother’s care, she advised then-case manager, Lori Rodriguez, that she wanted to take custody of the children, but to no avail. Case manager Facen testified that she declined to place the children with Grandmother because “[Grandmother] had not been involved on a regular basis up until that point” and because “the kids had been in the system for so long” and “were [already] in a stable home.” (Tr. 85).

On June 4, 2008, the trial court issued its judgment terminating Mother’s parental relationship with A.M.P, Jy.H., and Je.H. In its order, the trial court stated, in pertinent part, the following:

There is a reasonable probability that the condition resulting in the removal of the child[ren] from their parents' home will not be remedied . .

..

* * *

The permanency [sic] plan changed in July of 2006 after two and a half years of providing services to mother. Mother was again arrested in December 2006 and was facing federal charges. The mother was unstable, had a drug problem and was incarcerated on numerous occasions. The visitations ceased for the mother in December of 2006. The mother did not make herself available for any of the services. Mother was not keeping in contact with the [LCDCS] and the service providers. The service providers closed their case in 2006 due to mother's inavailability [sic]. Mother had become very inconsistent with services. Mother refused to leave her life partner. Mother allowed her life partner to have contact with the children after the court restricted his visitations. Mother has failed to keep her children safe. Mother does not have a stable home. Mother has a lengthy criminal history. Mother was recently released from prison and is residing in a homeless shelter. Mother has not received any professional help for her drug addiction. Mother has a criminal history that includes periods of incarcerations. Mother cannot provide a safe, stable and drug free environment for her children.

[A.M.P.'s father has not had contact with the LCDCS or with A.M.P.].

[Jy.H. and Je.H.'s father is deceased].

Neither parent⁵ is providing any emotional or financial support for these children. Neither parent has complied or completed the case plan. The services offered seem to be ineffective. Neither parent can provide a safe and stable home for the children. It is unlikely the parents will ever be in a position to properly parent these children. The children have been in placement since 2004 and have bonded with their foster mother. The children have been in placement for almost four years and have not been returned to parental care.

There is a reasonable probability that the continuation of the parent-child relationship[s] poses a threat to the well-being of the child[ren] in that: for the reasons stated above. Additionally, the children deserve a loving, stable, safe, secure, and drug free home.

⁵ In addition to terminating Mother's parental relationship with the children, the trial court also terminated the parent-child relationship between A.M.P. and her alleged father, R.M.

It is in the best interest[s] of the child[ren] and their health, welfare and future that the parent-child relationship between the child and their parents be forever fully and absolutely terminated.

The Lake County Division of Family and Children has a satisfactory plan for the care and treatment of the child[ren] which is Adoption by the foster mother, Evelyn Wilson.

(Order 1-2). Mother now appeals.⁶

DECISION

Mother argues that the trial court erroneously terminated her parental relationship with A.M.P, Jy.H., and Je.H. Specifically, she challenges the trial court's findings that the conditions that resulted in the children's removal would not be remedied; that termination of her parental rights was in the best interests of the children; and that the LCDCS had a satisfactory plan for the care and treatment of the children.

When reviewing termination of parental rights proceedings on appeal, we neither reweigh the evidence nor judge the credibility of witnesses. *In re T.F.*, 743 N.E.2d 766, 773 (Ind. Ct. App. 2001), *trans. denied*. We consider only the evidence that supports the trial court's decision and the reasonable inferences that may be drawn from that evidence. *Id.* In deference to the trial court's unique position to assess the evidence, we set aside the judgment terminating a parent-child relationship only if it is clearly erroneous. *Id.* If the evidence and inferences support the trial court's decision, we must affirm. *Id.*

"Parental rights are of a constitutional dimension, but the law provides for the termination of those rights when the parents are unable or unwilling to meet their parental responsibilities." *In re R.S.*, 774 N.E.2d 927, 930 (Ind. Ct. App. 2002), *trans. denied*.

⁶ Jeremiah Humphrey, father of Jy.H. and Je.H. is deceased. A.M.P.'s alleged father was duly served, but failed to appear for the trial.

The purpose of terminating parental rights is not to punish the parents, but to protect their children. *Id.* To effect the involuntary termination of a parent-child relationship, the State must present clear and convincing evidence establishing the elements of Indiana Code section 31-35-2-4(b)(2). *In re D.D.*, 804 N.E.2d 258, 265 (Ind. Ct. App. 2004), *trans. denied*. Thus, the State must prove that:

(b) The petition must:

* * *

(2) allege that:

(A) one (1) of the following exists:

(i) the child has been removed from the parent for at least six (6) months under a dispositional decree;

(ii) a court has entered a finding under Ind. Code § 31-34-21-5.6 that reasonable efforts for family preservation or reunification are not required, including a description of the court's finding, the date of the finding, and the manner in which the finding was made; or

(iii) after July 1, 1999, the child has been removed from the parent and has been under the supervision of a county office of family and children for at least fifteen (15) months of the most recent twenty-two (22) months;

(B) there is a reasonable probability that:

(i) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or

(ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;

(C) termination is in the best interests of the child; and

(D) there is a satisfactory plan for the care and treatment of the child.

I.C. § 31-35-2-4(b)(2).

I.

We begin by noting that because subsection (b)(2)(B) is written in the disjunctive, the trial court need only find by clear and convincing evidence that one of the two requirements of subsection (B) has been met in order to terminate a parent-child relationship. *Castro v. State Office of Family and Children*, 842 N.E.2d 367, 373 (Ind.

Ct. App. 2006), *trans. denied*. Thus, the LCDCS was required to prove that the conditions leading to removal would probably not be remedied or that the continuation of the parent-child relationship posed a threat to the well-being of A.M.P, Jy.H., and Je.H. We turn our attention to whether the evidence supports the finding that the continuation of the parent-child relationship posed a threat to the children's well-being.

The LCDCS presented ample evidence that maintaining Mother's parent-child relationship with the children posed a threat to the children's mental and emotional well-being. Case manager Edwards testified that she had reservations about Mother's drug rehabilitation and her ability "to take care of the children . . . in [a] safe environment." (Tr. 53). In her testimony, case manager Facen expressed similar reservations, stating that

[Mother], prior to being incarcerated, had not fully complied with the case plan. She had continued to test positive for cocaine. She failed to complete the outpatient drug treatment program and she refused to enter an inpatient program as recommended by the Court.

(Tr. 79). Likewise, the children's therapist, Amy Douglas, testified that Mother's inconsistency, unavailability for LCDCS services, and positive drug tests indicated that she was not equipped to provide a safe, stable, and drug-free environment.

Moreover, the LCDCS presented evidence that further delay in finalizing the children's situation would deprive them of the permanency that is essential to their development and well-being. At the time of the hearing, the children have been in foster care for over four years, and have never returned to Mother's care. In an October 26, 2006, court filing, Douglas wrote, "Clearly the length of time this case has been before the court and multiple failed attempts to reunify the family continue to place undue

burden on the children.” (Tr. 126). At trial, Douglas testified that protracted wardships generally cause children significant stress. With regard to A.M.P., Jy.H., and Je.H.’s experiences during their wardship, Douglas stated,

The children, on several occasions, really looked forward to going home. They definitely showed a bond with their mom. They wanted to go home. Every time we would get close, it would seem that something would happen. An allegation would happen, a positive screen for cocaine. It set things back so severely for the children. They would exhibit, you know, increase in behavior problems, emotional outbursts, and it took some time to re-stabilize them. Every time that would happen it would take time to stabilize them again. We’d have to, sometimes have increased therapy sessions, you know, I was really working with the foster families in doing that to try to stabilize the kids.

(Tr. 127). Douglas testified further that in her experience, “acting out behavior” is triggered by “[t]rauma,” “[p]hysical abuse, and exposure to inappropriate things in the home.” (Tr. 133). She also testified that A.M.P., Jy.H., and Je.H.’s “acting out” was the result of what they observed and experienced in Mother’s household, as well as “the drawn out process of, you know, thinking they’re going home and then not going home . . .” (Tr. 133). Lastly, Douglas testified that

[T]he length of time that these children have had to go through this situation, not knowing what the plan for them was going to be. It’s caused them distress, a significant amount of distress. Since they have not had contact with their mom, they have even indicated to me that they – well, I’m going to take each child individually. [A.M.P.] doesn’t have an interest in going home. [Jy.H.] doesn’t have an interest in going home. [Je.H.] has not said either way. But the two older children have indicated that they wish to remain with Ms. Wilson.

(Tr. 129).

The trial court heard additional and extensive testimony regarding how the children thrived in foster care with Ms. Wilson. Case manager Facen testified that Ms.

Wilson provided the children with “a loving, caring, stable home.” (Tr. 78). She testified that the children are “very loving towards [Ms. Wilson],” have gotten to know her entire family and they appear very comfortable in her home.” (Tr. 89-90). Case manager Roberts testified that the children “interact well with [Ms. Wilson,]. . . have developed a good rapport with her and they have really bonded with [her].” (Tr. 93). Both case managers testified that the children are performing well academically, and that Ms. Wilson has provided them with “structure, positive reinforcement for their positive behaviors,” and “redirect[ion] when they make mistakes or have negative behavior.” (Tr. 128, 93).

Based upon the foregoing, we conclude that the LCDCS presented clear and convincing evidence that continuation of Mother’s parent-child relationship with A.M.P., Jy.H., and Je.H. posed a threat to their mental and emotional well-being.

II.

Next, Mother contends that the LCDCS failed to present clear and convincing evidence that termination of her parent-child relationship with the children was in their best interests. As discussed at length above, the LCDCS case managers and the children’s therapist testified that the children have experienced considerable distress during their four-year-long wardship. Maintaining the parent-child relationship in contemplation of reunification would further extend the children’s wardship, because the LCDCS would need time in which to ensure that Mother (1) was drug-free⁷ and committed to leading a drug-free lifestyle; and (2) could provide for the children’s needs

⁷ Case manager Edwards testified that Mother tested positive for drug use approximately seven times during the pendency of this action.

in a safe environment. Additional delay, further compounding a four-year wardship, would likely cause the children further distress and would likely have an adverse impact on the children's behavior, sense of stability, and overall well-being. Thus, we conclude that the trial court's finding that termination of the parent-child relationship was in the children's best interests was not clearly erroneous.

III.

Lastly, we address Mother's contention that the LCDCS did not have a satisfactory plan for the children's care and treatment. Specifically, she contends that the LCDCS "advanced a shortsighted plan that excluded" the children's maternal grandmother "as a potential adoptive home." Rodriguez's Br. at 16.

The record amply supports the finding that the LCDCS has a satisfactory plan for the care and treatment of the children – namely, adoption by their foster mother, Ms. Wilson. *See Castro*, 842 N.E.2d at 378 (observing that adoption is generally a satisfactory plan for the care and treatment of children after termination of parental rights), *trans. denied*. In deference to the trial court's unique position to assess the evidence, we decline to revisit its decision to place the children with Ms. Wilson, and not in the home of their maternal grandmother. We neither reweigh the evidence nor judge the credibility of witnesses; we may only set aside the trial court's judgment if it is clearly erroneous. Such is not the case here.

The record reveals that Ms. Wilson wishes to adopt the three children. They have been in her care for the majority of their four-year wardship. She understands their special needs, is providing them with a loving and stable home environment, and is

willing to permit continued interaction between the children and their maternal grandparents and great-grandmother. The trial court properly determined that the LCDCS had a satisfactory plan for the care and treatment of the children.

Based upon the foregoing testimony, coupled with Mother's failure to complete out-patient treatment and rejection of inpatient treatment for her cocaine addiction, and the fact that the children are happy, stable, and thriving in their pre-adoptive placement with Ms. Wilson, we conclude that the evidence is sufficient to support the trial court's determination that termination of Mother's parental rights is in the best interests of the children. The judgment terminating Mother's parental rights was not clearly erroneous.

Affirmed.

RILEY, J., and VAIDIK, J., concur.